

REMARKS

Claims 1 – 34, 36 – 38, and 40 – 45 are in the instant application. Claims 21 – 23, 26, 28, 29, 36 and 41 – 43 are amended to more positively recite embodiments of applicant's patentably novel coated article. Claims 1-20, 44 and 45 are allowed.

The Office Action states that claims 21 – 34, 42 and 43 would be allowable if claims 21 – 23, 26, 28, 29, 42 and 43 are rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph. Claims 24 and 25 are dependent on claim 23; claim 27 is dependent on claim 26, and claims 30 – 34 are dependent on claim 29. Applicant respectfully traverses the rejection of claims 21 – 23, 26, 28, 29, 42 and 43 under 35 U.S.C. 112, second paragraph, however, to eliminate this issue, claims 21 – 23, 26, 28, 29, 42 and 43 have been amended to more positively recite the embodiments of applicant's patentably novel article.

Applicant respectfully submits that the amendments to claims 21 – 23, 26, 28, 29, 42 and 43 overcome the rejection under 35 U.S.C. 112, second paragraph. Support for the amendments to claims 21 – 23, 26, 28, 29, 42 and 43 is found, among other places, in the claims pending in the application.

Based on the foregoing, applicant respectfully requests admission of the amendments to, and consideration of, amended claims 21 – 23, 26, 28, 29, 42 and 43; withdrawal of the rejection of claims 21 – 23, 26, 28, 29, 42 and 43 under 35 U.S.C. 112, second paragraph, and allowance of claims 21 – 34, 42 and 43.

Claims 36 and 41 are rejected under 35 U.S.C. 112, second paragraph. Applicant respectfully traverses the rejection of claims 36 and 40 under 35 U.S.C. 112, second paragraph, however, to eliminate this issue, claims 36 and 41 are amended to more positively recite the embodiments of applicant's patentably novel article. Applicant respectfully submits that the amendments to claims 36 and 41 overcome the rejection under 35 U.S.C. 112, second paragraph. Support for the amendments to claims 36 and 41 is

found, among other places, in the claims pending in the application and on page 15, lines 9 – 21, of the specification.

Based on the foregoing, applicant respectfully requests admission of the amendments to, and consideration of, amended claims 36 and 41; and withdrawal of the rejection of claims 36 and 41 under 35 U.S.C. 112, second paragraph.

Claims 36 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Finley U.S. Patent No. 5,059,295 (hereinafter also referred to as "Finley"). The Office Action alleges that Finley discloses an embodiment that has a substrate, at least one dielectric layer (the first mixed oxide layer) and the protective coating may be considered the final layering of the two oxide films, the mixed tin and zinc oxide and the last layer of titanium oxide. Regarding claim 40, the Office Action alleges that the protective layer may also be considered the first layer of metal (which may be zirconium) with a thickness of 12 – 30 angstroms (col. 4, lines 50 – 60; col. 7, lines 16 – 2).

Applicant respectfully traverses the rejection of claims 36 and 40 under 35 U.S.C. 102(b) as being anticipated by Finley; however, to eliminate this issue, claim 36 on which claim 40 is dependent has been amended to recite, among other things, that the protective layer is not deposited on the optionally a first metal primer layer. In the arrangement proposed by the Office Action, the alleged protective layer of Finley is deposited on a primer layer (equated to the optionally a first metal primer layer recited in applicant's claim 36) that is deposited on the first layer of infrared reflecting metal. Regarding claim 40, there is no discussion in Finley of a zirconium film over the dielectric layer farthest from the substrate.

Based on the foregoing, applicant respectfully requests withdrawal of the rejection of claims 36 and 40 under 35 U.S.C. 102(b) as being anticipated by Finley.

Claims 36 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Apfel et al. U.S. Patent No. 3,682,528 (hereinafter also referred to as "Apfel"). Applicant respectfully traverses the rejection of claims

36 and 38 under 35 U.S.C. 102(b) as being anticipated by Apfel; however, to eliminate this issue, and as discussed above, claim 36 is amended. Claim 38 is dependent on claim 36.

The Office Action alleges that Apfel teaches an infra-red filter with a substrate of glass(11), a first layer of NiCr (16), a silver layer (17), a dielectric layer (19), another NiCr layer (18), a second silver layer (21), and a second dielectric layer (22). The thickness of the NiCr layer (18) is 5 – 20 angstroms (col. 2, lines 63 – 67). The Office Action concludes by alleging that the foregoing embodiment is a substrate, a metal protective layer (16), a dielectric layer (19), and at least one silver layer (21) over the first, dielectric layer.

Applicant respectfully submits that Apfel does not anticipate applicant's coated article recited in claims 36 and 38. More particularly, claim 36 recites that the (A) film which includes chromium, nickel and alloys thereof is deposited over the dielectric film farthest from the substrate. In Apfel, there is no film deposited over the dielectric film farthest from the substrate, e.g. film 22 in Fig. 1, and film 37 in Fig. 3, of Apfel.

Based on the above, applicant respectfully requests withdrawal of the rejection of claims 36 and 38 under 35 U.S.C. 102(b) as being anticipated by Apfel.

Claims 37 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finley in view of Arbab et al. EP 080348A2 (hereinafter also referred to as "Arbab"). Applicant respectfully traverses the rejection of claims 37 and 41 under 35 U.S.C. 103(a) as being as being unpatentable over Finley in view of Arbab, and requests reconsideration thereof. Claims 37 and 41 are dependent on claim 36 discussed above. Finley was discussed above. The Office Action alleges that it would have been obvious to one of ordinary skill in the art at the time of the invention to provide Finley with additional layers no provide an article with improved shell-life.

Applicant has shown above that Finley does not anticipate applicant's claim 36. More particularly, claim 36 on which claims 37 and 41

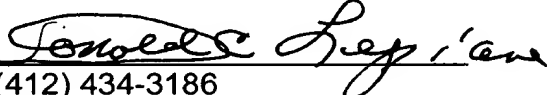
are dependent is amended to recite, among other things, that the protective layer is not deposited on the optionally a first metal primer layer. In the Finley coating stack proposed by the Office Action, the alleged protective layer of Finley is deposited on a primer layer (equated to optionally a first metal primer layer recited in applicant's claim 36) that is deposited on the first layer of infrared reflecting metal. Arbab does not cure the defect in Finley, therefore Finley in view of Arbab does not render the invention recited in applicant's claims 36, 37 and 41 obvious.

Based on the above, applicant respectfully requests withdrawal of the rejection of claims 37 and 41 under 35 U.S.C. 103(a) as being unpatentable over Finley in view of Arbab. Further based on the above, applicant requests allowance of claims 36 -38, 40 and 41.

This amendment represents a sincere effort to place the application in condition for allowance. In the event issues remain, the Examiner is invited to call the undersigned to discuss those issues before further action is taken on the case.

Respectfully submitted,

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